



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Implementation of Section 309(j)
of the Communications Act
Competitive Bidding
PP Docket No. 93-253

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' reply comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

Lisa M. Zaina
General Counsel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES

OPASTCO
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November 30, 1993

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SUMMARY

The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) submits reply comments to the FCC regarding implementation of Section 309(j) of the Communications Act.

OPASTCO repeats its assertion that a definition of "rural telephone company" based on the rural exemption to the cable television/telephone company cross-ownership rules will not identify those companies Congress directed the FCC to protect. OPASTCO modifies its proposed definition, stating that rural telephone companies are those which have 50,000 access lines or less or serve no community with more than 10,000 inhabitants.

OPASTCO further believes that consortia should be extended preferential treatment if they are at least 51 percent owned by designated entities. OPASTCO believes that: 1) rural telephone company preferences should not be limited to licenses covering specific geographic areas, 2) the PCS cellular eligibility requirements should not apply to rural telephone companies, and 3) installment payments should be offered at the federal government's cost of money.

Finally, OPASTCO reiterates that intermediate links and BETRS, as used by local exchange carriers (LECs) in the public switched network, should not be subject to competitive bidding.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Section 309(j)
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PP Docket No. 93-253

REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES

I. INTRODUCTION

On October 12, 1993, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking seeking comment on various spectrum auction methodologies and policies.¹ On November 10, 1993, 183 parties filed comments in response to the FCC's NPRM. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) hereby responds to some of those comments.

OPASTCO is a national trade association of more than 430 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which

¹In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rulemaking, 58 FR 53489 (October 15, 1993). (NPRM)

include both commercial companies and cooperatives, together serve more than two million customers. OPASTCO's members are concerned that their ability to serve their customers by providing future wireless communications services will depend not on whether they are the most qualified to provide such services, but instead on whether they are the most able to outbid other applicants for licenses in the competitive bidding process.

Congress, while authorizing the FCC to use competitive bidding in order to choose from among two or more mutually exclusive applicants for the initial licenses of certain services,² also shared OPASTCO's concern that spectrum auctions might favor those entities with "deep pockets" over those best able to serve the public interest. Congress, therefore, directed the Commission to ensure that "small businesses, rural telcos, and businesses owned by women and minorities are 'given the opportunity to participate' in the provision of spectrum-based services."³

OPASTCO and other parties commented on the various mechanisms the FCC proposed to assist it in carrying out its Congressional mandate. In its reply comments OPASTCO will continue to examine this facet of the Commission's competitive bidding NPRM.

²Section 6002, Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, Title VI, 107 STAT. 387.

³NPRM at para. 72.

OPASTCO repeats its assertion that a definition of "rural telephone company" based on the rural exemption to the cable television/telephone company cross-ownership rules will not identify those companies Congress directed the FCC to protect. OPASTCO modifies its proposed definition, stating that rural telephone companies are those which have 50,000 access lines or less or serve no community with more than 10,000 inhabitants. OPASTCO believes consortia should be extended preferential treatment if they are at least 51 percent owned by designated entities. OPASTCO also believes that: 1) rural telephone company preferences should not be limited to licenses covering specific geographic areas, 2) the personal communications service (PCS) cellular eligibility requirements should not apply to rural telephone companies, and 3) installment payments should be offered at the federal government's cost of money. Finally, OPASTCO reiterates that intermediate links and BETRS, as used by local exchange carriers (LECs) in the public switched network, should not be subject to competitive bidding.

II. THE COMMISSION'S PROPOSED DEFINITION OF "RURAL TELEPHONE COMPANY" IS TOO NARROW

- A. A definition of "rural telephone company" based on the rural exemption to the cable television/telephone company cross-ownership rules will not address Congress' concerns in the competitive bidding context

Many parties concur with OPASTCO's assertion in its initial comments that the FCC's proposal to use the cable television/telephone company cross-ownership definition of

"rural" is inappropriate in the context of competitive bidding.⁴ OPASTCO agrees with PMN's observation that the rural exemption to the cable cross-ownership rules was promulgated out of concern for the end-user recipients of cable service, not the size of the telephone company that might provide that service.⁵ NTCA correctly points out two problems with a direct application of the cable cross-ownership rules to competitive bidding. First, on the company side, almost every telephone company in the nation serves at least one "place" with a population of less than 2,500. Such a definition applied to companies would clearly include very large corporations that do not require preferential treatment in an auction environment. Second, on the service side, every Rand McNally Basic Trading Area (BTA) in the nation (for example) includes at least one "place" with a population greater than 2,500. Such a definition applied to a wireless service's licensing area, as it is in cable, would produce no rural areas at all.⁶

Congress' intent in directing the FCC to ensure the effective participation of rural telephone companies was to protect companies that are experts at delivering communications services to rural areas, but, absent preferential treatment,

⁴Iowa Network Services Comments at 13-14; National Telephone Cooperative Association (NTCA) Comments at 3-4, fn 2; PMN, Inc. (PMN) Comments at 7; Rural Cellular Association (RCA) Comments at 12-13; U.S. Intelco Networks, Inc. (USIN) Comments at 14.

⁵PMN Comments at 7.

⁶NTCA Comments at 3, fn 2.

would not have a realistic chance of successfully bidding on licenses due to their size and financial resources. OPASTCO believes that the cable cross-ownership exemption model does not properly identify those companies that the local exchange industry generally understands to be rural.

- B. A rural telephone company should be defined as one which has 50,000 access lines or less OR serves no community with more than 10,000 inhabitants.

In its initial comments, OPASTCO points out that the problem rural telephone companies will face in the competitive bidding arena is based on their size as much as the rural nature of their wireline service areas. OPASTCO, therefore, suggests that a dual definition of rural telephone company, based on the company's size or service area characteristics, would be necessary in order to accurately and comprehensively identify those companies that require preferential treatment in order to enjoy the economic opportunity that Congress desired.

OPASTCO recommends in its initial comments that the FCC defines rural telephone company as a LEC that either A) provides local exchange service to a study area that does not include any incorporated place of 10,000 or more or any urbanized area, or B) provides local exchange service by wire to less than 10,000 access lines. OPASTCO notes that it would support an access line definition of 50,000, based on Part 61 of the Commission's Rules.⁷

⁷47 C.F.R. Section 61.39.

NRTA and NTCA both make similar proposals. As NTCA points out, this definition is very similar to one adopted by the Senate in its version of the Omnibus Budget Reconciliation Act of 1993.⁸ The Rocky Mountain Telecommunications Association and Western Rural Telephone Association, in joint comments (RMTA/WRTA), indicate that a similarly constructed definition, but with an access line ceiling of 20,000, should be used.⁹

Other parties recommend a definition based solely on access lines. American Personal Communications (APC) suggests 150,000 access lines, "in combination with all parent companies and subsidiaries, as of the date of the bid."¹⁰ Of those commenters suggesting an access line-based definition, most indicate that a ceiling of 50,000 is appropriate.

Those commenters maintain that 50,000 access lines is a legitimate number because it is already used as the definition of "small telephone company" in existing FCC rules. NTCA points out that, although "size" and "rural" are two different characteristics, the evolution of the telephone industry has led to a situation in which small companies serve almost exclusively rural areas.¹¹ The RCA adds that the 50,000 access line definition is "more meaningful" because it was derived with

⁸NTCA Comments at 6.

⁹RMTA/WRTA Comments at 19-20.

¹⁰APC Comments at 4.

¹¹NTCA Comments at 5, fn 4.

reference to the telephone industry as a whole.¹² According to Part 61 of the FCC's rules, which regulate small telephone company operations, a telephone company is "small" if it serves fewer than 50,000 access lines. These rules recognize that companies of a certain size are valuable because of their expertise in bringing advanced communications services to rural areas. OPASTCO agrees with the Small Telephone Companies of Louisiana (LA Companies), which state that such a definition will more closely fulfill the Congressional mandate to ensure opportunities for rural telephone companies and bring service to rural residents.¹³

OPASTCO believes the above arguments are sound. OPASTCO, therefore, now incorporates 50,000 access lines in its proposed definition of rural telephone company as follows:

A rural telephone company is defined as any local exchange carrier that either:

A) provides local exchange service to a local exchange study area that does not include either

1) any incorporated place of 10,000 or more, or any part thereof, or

2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993 (the date the Budget Act became law);

OR

B) provides telephone exchange service by wire to less than 50,000 access lines.

OPASTCO believes that its revised definition properly identifies those companies that require preferential treatment in

¹²RCA Comments at 14.

¹³LA Companies Comments at 13.

order to realize the economic opportunities in a competitive bidding environment that Congress desired.

- C. Consortia should be extended preferential treatment if they are at least 51 percent owned by designated entities

In its NPRM the FCC asked whether consortia should be wholly or predominantly comprised of designated entities in order for the consortia to receive preferential treatment.¹⁴ OPASTCO agrees with those commenters who state that for any consortium to be considered eligible for preferences, it must be 51 percent controlled by entities that, individually, are eligible for those preferences.¹⁵ OPASTCO believes that this requirement will protect the integrity of the "preferential" process, and allow designated entities such as rural telephone companies another competitive bidding participation option.

II. RURAL TELEPHONE COMPANY PREFERENCES SHOULD NOT BE LIMITED TO LICENSES COVERING SPECIFIC GEOGRAPHIC AREAS

In its NPRM the Commission sought comment on whether rural telephone companies should receive preferential treatment in the competitive bidding process only when those companies are bidding on licenses that cover "a market area or reliable service area that also encompasses all or some significant portion of their franchised service area."¹⁶ OPASTCO, in its initial comments, replies that a rural telephone company should receive special

¹⁴NPRM at para. 78.

¹⁵RCA Comments at 19.

¹⁶NPRM at para 77.

treatment, including tax certificates and the ability to pay the winning bid in installments over time, regardless of the specific spectrum block for which it is bidding.

Other commenting parties disagree. AT&T states that rural telephone companies should not receive preferences for any licenses that do not include a portion of the telephone company's wireline service area.¹⁷ The Small Business Administration (SBA) similarly suggests that the FCC restrict the special treatment of rural telephone companies to licenses which include their market area or reliable service area.¹⁸ APC recommends that rural telephone companies be eligible to bid on set-aside spectrum blocks only for licensing areas in which they have wireline telephone facilities, claiming that doing otherwise would not be "rationally related" to the purpose of the set-aside.¹⁹

These commenters are incorrect. As the LA Companies note, Congress' interest in ensuring the viable participation of rural telephone companies is based in part on the belief that "rural telephone companies are likely to serve the public interest by bringing advanced communications services to high-cost, low-demand markets on a cost-effective basis."²⁰ Limiting the scope of the preferences in effect penalizes rural telephone companies

¹⁷AT&T Comments at 26, fn 31.

¹⁸SBA Comments at 14.

¹⁹APC Comments at 7.

²⁰LA Companies Comments at 13.

by placing restrictions on them that would not be placed on other parties participating in competitive bidding -- not very "preferential" treatment for preferred entities.

III. THE PCS CELLULAR ELIGIBILITY REQUIREMENTS SHOULD NOT APPLY TO RURAL TELEPHONE COMPANIES

In its initial comments OPASTCO points out that, in order for the Commission's rural telephone company preferences to be meaningful in the context of PCS, the FCC must free those companies of its PCS cellular eligibility requirements.²¹ Many rural telephone companies hold small, passive interests in the cellular operations in their region. Often, in a particular area a group of these small companies all individually hold modest interests in the same cellular partnership. Many companies will undoubtedly want to provide PCS and other wireless services to their customers via the same group of rural telephone companies with which they have grown accustomed to working in the cellular environment. Although these companies individually may have quite small interests in the cellular partnership, the FCC's existing rules would add up all of their individual interests for the purpose of determining whether or not the group as a whole qualifies as a cellular company. If it does, the group is limited to bidding on 10 MHz of spectrum for a PCS license in any areas in which it has a cellular presence.

²¹OPASTCO will petition the FCC for reconsideration of this portion of its PCS Order. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, Second Report and Order, 58 FR 59174 (November 8, 1993).

OPASTCO believes that this rule will adversely affect the participation of the very companies Congress has required the FCC to protect. PMN, a consortium of rural telephone companies in South Carolina that is a 50% general partner of a group of wireline cellular rural service areas (RSAs), discusses the consequences of this rule quite effectively.²² RMTA/WRTA also state that the application of these rules to designated entities applying for licenses in Blocks C and D would defeat Congress' mandate.²³

OPASTCO reiterates that the Commission's PCS cellular eligibility rules should not apply to rural telephone companies.

IV. INSTALLMENT PAYMENTS SHOULD BE OFFERED AT THE FEDERAL GOVERNMENT'S COST OF MONEY

In its NPRM the FCC suggested allowing rural telephone companies and other designated entities to pay off their winning bids via installment plans with interest.²⁴ While OPASTCO enthusiastically supports the use of installment plans for designated entities, it finds the Commission's suggestion to offer deferred payments at an interest rate of prime plus one percent to be contrary to Congressional intent.

NRTA correctly points out in its comments that charging interest at an interest rate of prime plus one would "undermine the entire purpose of deferred payment schedules -- to help the

²²PMN Comments at 12-13.

²³RMTA/WRTA Comments at 6.

²⁴NPRM at para. 79.

designated entities to obtain financing and increase their bidding power."²⁵ OPASTCO further agrees that if the Commission does indeed charge interest, it should charge only the government's cost of money.

V. INTERMEDIATE LINKS AND BETRS SHOULD NOT BE SUBJECT TO COMPETITIVE BIDDING

The FCC proposed that certain services be eligible for competitive bidding in the future.²⁶ The Commission stated that because local exchange carriers (LECs) are common carriers, by definition they offer their services to end users for compensation. Therefore, services such as intermediate microwave links and Basic Exchange Telephone Radio Systems (BETRS) are eligible for competitive bidding because they allow LEC customers, who pay for their local exchange service, to "receive communications signals" or "transmit directly communications signals."²⁷

OPASTCO and a great many other commenters strongly dispute this interpretation of the FCC's statutory instructions.²⁸ As USIN points out, "the ability to receive signals is dependent on the carrier's entire network, not simply upon intermediate

²⁵NRTA at 11.

²⁶NPRM at paras. 114-166.

²⁷New Section 309(j)(2)(A) of the Communications Act of 1934.

²⁸See, for example, Southwestern Bell Corporation Comments at 6-12; USIN Comments at 4-7.

links."²⁹ As for the second condition, USIN states, "there is, by definition, no 'direct' transmission by a subscriber utilizing the subject frequencies, but rather indirect transmission through the carrier's network."³⁰ The service LEC customers are buying is local exchange telephone service. The presence of wireless technologies such as intermediate microwave links or BETRS does not and should not require competitive bidding.

Congressman John Dingell (D-MI), Chairman of the House Committee on Energy and Commerce, voices a similar view in a letter to Chairman Quello dated November 15, 1993. Chairman Dingell writes, "Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate."³¹

VI. CONCLUSION

OPASTCO repeats its assertion that a definition of "rural telephone company" based on the rural exemption to the cable television/telephone company cross-ownership rules will not identify those companies Congress directed the FCC to protect. OPASTCO modifies its proposed definition, stating that rural telephone companies are those which have 50,000 access lines or

²⁹USIN Comments at 5.


³⁰Id.

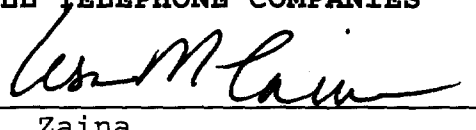
³¹Letter to Congressman John D. Dingell (D-MI), Chairman of the House Committee on Energy and Commerce, to FCC Chairman James H. Quello, dated November 15, 1993.

less or serve no community with more than 10,000 inhabitants. OPASTCO believes consortia should be extended preferential treatment if they are at least 51 percent owned by designated entities. OPASTCO also believes that: 1) rural telephone company preferences should not be limited to licenses covering specific geographic areas, 2) the PCS cellular eligibility requirements should not apply to rural telephone companies, and 3) installment payments should be offered at the federal government's cost of money. Finally, OPASTCO reiterates that intermediate links and BETRS should not be subject to competitive bidding.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
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November 30, 1993

CERTIFICATE OF SERVICE

I, Megan A. Gillispie, hereby certify that a copy of OPASTCO's reply comments was sent on this, the 30th day of November, 1993, by first class United States mail, postage prepaid, to those listed on the attached sheet.

A handwritten signature in cursive script, reading "Megan A. Gillispie", written over a horizontal line.

Megan A. Gillispie

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